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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re CARLOS G., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS G.,

Minor and Appellant.

D040570

(Super. Ct. No. J197696)

APPEAL from an order of the Superior Court of San Diego County, Thomas M.
Fiorello, Judge. Affirmed.

Carlos G. was declared a ward (Welf. & Inst. Code, § 602) after he admitted petty theft. The court placed him on probation including a condition he is jointly and severally liable for payment of \$2,742.23 restitution to the victim. Carlos contends the court erred in making him jointly and severally liable for \$2,742.23 restitution.

FACTS

On October 4, 2001, Melanie A. invited Carlos, Jose A. and Pedro O. to the home she shared with her mother. According to Carlos, the group smoked methamphetamine and Pedro went to Melanie's mother's room and took jewelry. Jose put the jewelry in his sock at Pedro's request and returned it to Pedro once they had left the home. Meanwhile, Carlos took a compact disc (CD) player and placed it in Jose's backpack.

At a restitution hearing, Carlos argued he admitted taking only the CD player and should not be made jointly and severally liable for restitution covering the missing jewelry.

DISCUSSION

I

"Restitution has long been considered a valid condition of probation." (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.) Welfare and Institutions Code section 730.6, subdivision (f) provides that a juvenile shall be ordered to pay restitution in the amount of the loss. A trial court does not abuse its discretion in setting restitution if there is a factual and rational basis for the amount set. (*People v. Hartley* (1984) 163 Cal.App.3d 126, 130.)

Relying on *In re Maxwell C.* (1984) 159 Cal.App.3d 263, and *People v. Richards* (1977) 17 Cal.3d 614, Carlos argues he admitted stealing the CD player, not the jewelry, and the trial court here abused its discretion in making him responsible for a loss he did not cause. He notes he was neither charged with stealing the jewelry nor the subject of a true finding he stole the jewelry. In *In re Maxwell*, the minor was charged with receiving

stolen property, a car stereo. He was ordered to make restitution for damage to the stereo and the car from which it had been taken. Relying on *People v. Richards, supra*, 17 Cal.3d 614, the reviewing court reversed the restitution order, holding the record lacked evidence the minor was responsible for the damage to the vehicle. (*In re Maxwell, supra*, 159 Cal.App.3d at pp. 265-266.) In *People v. Richards*, the defendant was charged with theft from two different victims. He was found guilty of one of the thefts but acquitted of the other. The trial court ordered him to pay restitution for both thefts. The Supreme Court reversed this order because it would not serve the goal of rehabilitation. (*People v. Richards, supra*, 17 Cal.3d at pp. 617-619.) However, the trial court has discretion "to order restitution as a condition of probation where the victim's loss was not the result of the crime underlying the defendant's conviction" if restitution serves one of the purposes of probation. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1122.) "A court may also consider crimes which were charged but dismissed [citation]; uncharged crimes, the existence of which is readily apparent from the facts elicited at trial [citation]; or even charges of which the defendant was acquitted, if justice requires they be considered. [Citation.]" (*People v. Goulart* (1990) 224 Cal.App.3d 71, 79.)

Here, Carlos and two companions entered a home to smoke methamphetamine. While inside the home Carlos stole a CD player and one of his companions stole jewelry. Carlos's second companion carried the stolen property from the home. Once outside the three divided the property. We must indulge in all reasonable inferences to support the trial court's implied finding that Carlos's criminal conduct caused the loss. (See *In re*

Michael R. (1977) 73 Cal.App.3d 327, 333.) It was reasonable to infer that the three guests in Melanie's home acted together to cause the victim's loss.

In *People v. Carbajal, supra*, 10 Cal.4th at page 1126, the Supreme Court distinguished *People v. Richards, supra*, 17 Cal.3d 614, because the defendant in *Carbajal*, unlike the defendant in *Richards*, was not acquitted of the crime underlying the challenged restitution order, and disapproved of *Richards* insofar as it precluded ordering restitution for a crime committed with a different state of mind than the crime of which the defendant was convicted. In *Carbajal*, the defendant was convicted of "hit-and-run." The trial court ordered him to make restitution for damage to the parked car he hit. The Supreme Court affirmed, holding, "conditioning his probation on a restitution order would make amends 'to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer.'" (*People v. Carbajal, supra*, 10 Cal.4th at p. 1126.) Here, the evidence supports a finding that Carlos and his companions stole a CD player and the companions stole jewelry from Melanie's mother. The trial court did not abuse its discretion in finding that an order Carlos make restitution for the victim's loss would aid in his reform and rehabilitation.

II

Relying on *People v. Hernandez* (1991) 226 Cal.App.3d 1374, Carlos argues that making him jointly and severally liable for the victim's loss denied him due process of law in that it prevents him from raising claims he would raise in civil litigation. However, he recognizes that a result contrary to *Hernandez* was reached in *People v.*

Campbell (1994) 21 Cal.App.4th 825, 834, *People v. Zito* (1992) 8 Cal.App.4th 736, 744, and *In re S. S.* (1995) 37 Cal.App.4th 543, 550. As the reviewing court expressed in *In re S. S.*, *supra*, 37 Cal.App.4th at page 549, the trial court has discretion "to apportion restitution in a manner which will effectuate the legislative objectives of making the victim whole and rehabilitating the minor." We agree.

Carlos argues that his inability to have a determination made of the amount of the loss he personally caused the victim to sustain is particularly egregious because as a minor he is unable to sue Jose if Jose does not pay his portion of the restitution amount. He is mistaken. Through a guardian ad litem he can sue Jose, or in the alternative, can sue Jose once Carlos reaches the age of 18.

The reviewing court in *In re S. S.*, *supra*, 37 Cal.App.4th 543, also resolved a claim that a joint and several liability order for restitution is too vague to rehabilitate a minor. The court pointed out, "Such an order merely means that the defendant (or juvenile) is responsible to make restitution for the full amount of the victim's losses, but the defendant's obligation shall be reduced by any payments to the victim by other wrongdoers." (*Id.* at p. 550.) The trial court did not abuse its discretion in making Carlos jointly and severally liable for the victim's entire loss.

DISPOSITION

The order for restitution is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

HALLER, J.